United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

ORIGINAL

74-1344 B

United States Court of Appeals P/S

FOR THE SECOND CIRCUIT

JOAQUIM CONCEICAO,

Plaintiff-Appellee,

against

NEW JERSEY EXPORT MARINE CARPENTERS, INC.,

Defendant and Third-Party Plaintiff-Appellee,

and

CIA DE NAV MAR NETUMAR,

Defendant and Third-Party Plaintiff-Appellant,

against

INTERNATIONAL TERMINAL OPERATING CO., INC.,

Third-Party Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF OF DEFENDANT AND THIRD-PARTY PLAINTIFF-APPELLANT

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REPLY BRIEF OF DEFENDANT AND THIRD-PARTY PLAINTIFF-APPELLANT

Statement

This reply brief is being submitted because in their briefs appellees have elected to omit certain material evidence from their facts, have misinterpreted the law, and seek to have this appeal determined on issues which were not submitted to the jury and on which the jury was not charged.

POINT I

Inference and conjecture are not substitutes for probative evidence.

Admittedly, it is the function of a jury to weigh the contradictory evidence and inferences and select from among conflicting inferences and conclusions that which it considers most reasonable; and in doing this, a certain measure of speculation and conjecture is permitted. However, as this Court pointed out in *O'Connor* v. *Pennsylvania RR. Company*, 308 F.2d 911, 914-915 (2d Cir. 1962), a jury cannot be permitted to make unreasonable findings of fact and its inferences must be within the range of reasonable probability. Insofar as speculation and conjecture are concerned, there must be an evidentiary basis for the inferences, *Lavender* v. *Kurn*, 327 U.S. 645, 653 (1946) and they are not a substitute for probative facts. While in *Tennant* v. *Peoria and P.U. Ry. Co.*, 321 U.S. 29, the United States Supreme Court did say that the Courts were not free to reweigh the evidence and set aside the jury verdict because the evidence gave equal support to inconsistent inferences or because a Court might feel that other results were more reasonable, it did not elim-

inate the necessity of establishing probative facts which would support not just any inferences but inferences which were reasonable. It said at page 33:

> "Petitioner was required to present probative facts from which the negligence and the causal relation could reasonably be inferred. 'The essential requirement is that mere speculation be not allowed to do duty for probative facts, after making due allowance for all reasonably possible inferences favoring the party whose case is attacked.' *Galloway* v. *United States*, 319 U.S. 372, 395, 87 L. ed. 1458, 1473, 63 S Ct. 1077; *Atchison, T. & S.F.R. Co.* v. *Toops*, 281 U.S. 351, 74 L ed. 896, 50 S Ct. 281."

This Court has not adopted a different rule. In *Lebrecht* v. *Bethlehem Steel Corp.*, 402 F.2d 585 (2 Cir. 1968) it held that in viewing the evidence in the light most favorable to the non-moving party, it must give the party the benefit of all inferences which the evidence fairly supports. In *Radiation Dynamics, Inc.* v. *Goldmuntz*, 464 F.2d 876 (2 Cir. 1972) it said at page 887:

> "Moreover, as was pointed out by Judge Haynsworth in *Ford Motor Company* v. *McDavid*, 259 F.2d 261, 266 (4 Cir.), cert. denied, 358 U.S. 908, 79 S.Ct. 234, 3 L.Ed.2d 229 (1958), 'Permissible inferences must still be within the range of reasonable probability, however, and it is the duty of the court to withdraw the case from the jury when the necessary inference is so tenuous that it rests merely upon speculation and conjecture.'"

POINT II

There is no probative evidence in the record to support a finding or an inference that the defendant shipowner ordered, directed or required that more pipe be stowed into the pipe bed, than that which the pipe bed was reasonably fit to hold.

In support of their contention that the jury could have inferred from the evidence that the upright or uprights broke because the pipe bed was overloaded, the appellees point out two statements, one of which was made by the carpentry foreman Montella and the other by the hatch boss Ratliff and urge that standing in isolation they sustain an inference of overloading.

On redirect examination Montella was permitted to testify over objection that when he reached the scene of the accident after the pipe had been moved in order to free plaintiff's left foot (32a, 79a-80a, 141a), he observed that the pipe was stowed much higher than the upright (258a). This testimony was given after an objection to the question "if the pipe is loaded above the 5-foot area, will it hold the pipe?" was sustained by the Court on the ground that there was no such testimony in the case (257a).

The hatch boss Ratliff was permitted to testify also over objection that if the pipe was placed higher than the uprights, that would be bad practice (114a-115a). The objection to the question was made by plaintiff's counsel on the ground that there was no proof in the case that the pipe was placed higher than the uprights and the Court permitted the answer only on the ground that it was "a theoretical question" (114a-115a). Prior to answering this question, hatch boss Ratliff had testified that when the accident occurred, the pipe in the pipe bed was below the height of the uprights (108a-109a). On recross-examination Ratliff was emphatic that the only reason why

it was not good practice to load the pipe above the height of the upright was because the pipe would roll out of the the bed (118a).

Prior to testifying that the pipe was stowed much higher than the uprights, Montella had testified that the pipe bed as it had been constructed by him could hold anything no matter what size pipe, diameter pipe, or length of pipe that went into the bed (254a-255a). He also testified that after inspecting the split upright following the plaintiff's accident, and noting that it had round markings on it (221a, 246a-247a) he could tell what the cause of the split was and that in his opinion based on his experience and having seen other damaged uprights, the upright in question was caused to split because it had been damaged by the longshoremen in permitting the pipe to come into contact with it in the course of the loading operation (220a-221a).

The United States Supreme Court however held in *Moore* v. *Chesapeake & Ohio Railway Co.*, 340 U.S. 573, 577 (1951), that inferences cannot be supported by isolating portions of a witness's testimony, particularly when such isolated testimony placed in its setting of uncontradicted and unequivocal testimony is totally at variance with such an inference. The omission from the appellees' briefs of any mention of Montella's testimony as to the cause of the breaking of the upright and Ratliff's testimony as to why he felt that the loading of pipe higher than the uprights was bad practice therefore appears to be more than a mere oversight.

The appellees' briefs also suggest that because one of the exhibits for which the jury asked was the cargo plan and this cargo plan showed that 41 pieces of pipe were to be stowed on the port and starboard sides of #1 hatch and 72 pieces at #2 hatch, the jury could have concluded that the 41 pieces as well as the 72 pieces were all to be stowed at #1 hatch, and inferred contrary to the cargo plan, that the

shipowner had ordered such stowage thereby resulting in overloading the area. As the United States Supreme Court pointed out in *Moore* v. *Chesapeake & Ohio Railway Co.*, 340 U.S. 573, 576, disbelief of evidence does not supply a want of proof even though it may be the jury's function to credit or discredit all or part of the testimony. Thus, if the jury disbelieved the cargo plan, it could not on the basis thereof infer that all the pipe was to be stowed in or at #1 hatch.

There was neither claim nor testimony that more than 41 pieces of pipe were required to be stowed in separate beds, one on the port and the other on the starboard side of #1 hatch, or that more than 41 pieces or half that amount were stowed in the pipe bed at #1 hatch at the time of the plaintiff's accident, or for that matter, at any other time. The record is devoid of any evidence as to how many pieces of pipe were in the pipe bed at the time in question. The longshoreman James Head did testify that after the accident, the longshoremen resumed loading pipe across the top of the hatch. There is no evidence that this was being done because too much pipe had been ordered to be put into the bed in question. The plaintiff testified without contradiction that when his accident occurred, he was in the process of removing the hooks from the last two pipes which were to be placed in the pipe bed in question (30a). Admittedly, the jury was not required to accept the plaintiff's testimony. In order to infer from Head's testimony that the reason the pipe was being stowed across the top of the hatch, the jury would have to reason from no testimony that this was being done because there was too much pipe to stow in the pipe bed, then infer from the happening of the accident that the reason the upright or uprights gave way, was because an excessive number of pipe had been stowed in the pipe bed, and then further from no evidence at all, that the shipowner had ordered, directed, or required this excessive though indeterminate number of pipe to be stowed in the pipe bed.

Since the mere happening of an accident is not proof of either negligence or unseaworthiness, *Mosley* v. *Cia Mar Adra, S.A.*, 314 F.2d 223, 228-229 (2d Cir. 1963) such reasoning as the Court stated in *Moore* v. *Chesapeake & Ohio Railway Co., supra* (340 U.S. at page 578) would be speculation run riot and not a substitute for proof.

In *Atlantic & Gulf Stevedores* v. *Ellerman Lines*, 369 U.S. 355, 364, the United States Supreme Court admittedly did state that "where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way". Before it did so, the Court was careful to review the evidence supporting that view and point out that it was not only an issue on which the case went to the jury, but also was "a matter which was covered by the charge to the jury on the issue of unseaworthiness, and properly so". It is significant that it was a matter which was not only covered by the charge, but by a proper charge. In the *Atlantic & Gulf Stevedores* v. *Ellerman Lines* case, the jury had found both that the shipowner was negligent and that its vessel was unseaworthy. It was because of these findings that the Court pointed out that "the totality of the circumstances" were to be taken into account in determining whether there was a view of the case which made the jury's answers consistent. In this case, the jury however found no unseaworthiness. Thus, any view of the case which might be dependent on a finding of unseaworthiness or might have been a basis for making the jury's finding consistent if there had been a finding of unseaworthiness, is not a valid basis for sustaining the jury's finding of negligence on the part of the defendant shipowner.

Even though the appellees belabor the contention that the jury could have inferred that an upright or uprights gave way because the pipe bed was overloaded or that the shipowner either ordered, directed, or required the overloading of the pipe bed, there was never any such claim

urged. Nor was there ever any claim that a sufficient number of pipe beds were not constructed at #1 hatch in order to contain the 41 pieces of pipe which were scheduled to be loaded therein. These are simply after-thoughts which have been created for the purpose of this appeal, and found no support in the record. In its charge to the jury the Court specifically restricted the negligence claim respecting stowage and the loading operations to supervision of the cargo operations and the manner used to load, stow and carry the cargo (408a). Thus, not only was the alleged overloading not an issue submitted to the jury, but under the Court's charge, a finding of overloading was not only not permissible but was contrary to the Court's charge. See further Point VI, *infra*.

POINT III

The only view of the case that makes the jury's answers to the special interrogatories consistent, is that the longshoremen damaged the uprights.

As has been pointed out in the main brief, the trial judge refused to charge the jury that while the shipowner may have been in overall control of the operation, it had no duty to supervise the longshoremen in the manner in which they conducted their work and was not liable for the negligence of the longshoremen in the conduct of their work. Further, as has been shown in the main brief, the trial court was in error in charging that the shipowner's right to indemnity could be forfeited by some inaction on its part. Though this was incorrect, it was the law of the case and the jury's answers must be considered in the light of this law.

Since the case went to the jury on the issues of whether the upright or uprights gave way in normal use or because they were damaged by the longshoremen, and the jury found that the vessel was not unseaworthy and the pipe bed therefore reasonably fit for its intended pur-

pose, but that the longshoremen breached its warranty of workmanlike service, the only view of the case that makes the jury's answers to these special interrogatories consistent, is that the longshoremen damaged the uprights in the course of the loading operation, and that the shipowner was negligent because of its failure to properly supervise the cargo operations and the manner used to load, stow and carry the cargo, and that its inaction precluded indemnity. Neither *Atlantic & Gulf Stevedores* v. *Ellerman Lines, supra,* nor any other case holds that to achieve consistency in the jury's answers, erroneous instructions must be ignored and it be assumed that the jury applied the correct law.

In its brief, the stevedore International Terminal Operating Co., Inc., at page 10, states that the ship's officers "were concededly present and supervising the loading operation". There is no such concession anywhere in the record and there is no evidence that they either were or were not present and that they were or were not supervising the loading operation. As a matter of fact, the testimony in this case was uncontroverted that while the shipowner's port captain and the master and chief officer of the SS MOSQUIERO drew up and approved the proposed stowage, it was subject to the approval of the stevedore (173a) and the hatch boss directed the longshoremen how to lay the pipe in the bed (90a), and that the pipe was put on the ship in the place where the stevedore told the hatch boss to stow it (81a).

There also was no evidence in the case that the ship's officers or anyone for whom the shipowner was responsible in any way directed, interfered with or in any way were involved in the loading operation except as it was concerned with shipboard stability and contamination of one cargo with the other (388a-389a).

The record is devoid of any evidence of any condition either caused by the defendant shipowner or of which it had knowledge or which should have been discovered in the

exercise of reasonable care. It is suggested at page 10 of the plaintiff's brief that the jury could have concluded that the shipowner was negligent because its personnel were present and saw the overloading, or were not present and in attendance when they should have been. As the Court pointed out in *Nosal* v. *Calmar Steamship Corporation,* 339 F. Supp. 1235, 1237 (E.D. Pa. 1972) it follows from the jury's finding that the vessel was seaworthy, that the ship's personnel not only performed their duties with due diligence, but also in accordance with the absolute standards required for seaworthiness. On the other hand, if as the appellees concede the evidence was uncontroverted that the loading operation proceeded smoothly and that at no time was any damage to the pipe bed observable, there could be no basis for a finding of negligence. In *Slan* v. *A/S Det Danske-Franske D/s,* 479 F.2d 288, 289 (5 Cir. 1973) the Court held that under such circumstances and in the absense of other competent proof upon which the jury might find that the ship's officers had knowledge of a defective condition or that such a condition should have been discovered by a reasonably prudent ship's officer, there can be no finding of negligence.

At page 13 of its brief New Jersey Export suggests that under *Usner* v. *Luckenbach Overseas Corp.,* 400 U.S. 494, the jury could have found that the ship and its appurtenances were reasonably safe but that the accident occurred instantaneously by the stevedore's compliance with the ship's negligent order to add the last two pieces of overweight to the serviceable deck crib. While the record is devoid of any evidence to support such an inference this concept however has been rejected by the United States Supreme Court in *Waldron* v. *Moore-McCormack Lines,* 386 U.S. 724, 726-727. In that case the Court reemphasized that under the law as it had defined it, misuse by the crew of equipment renders a vessel unseaworthy even though the equipment furnished for a particular task is itself safe and sufficient.

POINT IV

The right to indemnity is not dependent on a finding of unseaworthiness.

In Point II of its brief the third-party defendant International Terminal Operating Co., Inc. incorrectly urges that since the defendant's vessel was found not to be unseaworthy, the jury's finding of a breach of warranty of workmanlike service by the stevedore is rendered inconsistent because the warranty of workmanlike service is ultimately derived from a shipowner's liabilities under the seaworthiness guarantee. In *Simpson* v. *Royal Rotterdam Lloyd*, 225 F. Supp. 947, 952 (SDNY 1964), the Court rejected this contention stating:

> "Moreover, Courts have allowed indemnification of the shipowner where the shipowner was found negligent to a longshoreman, without requiring a finding of unseaworthiness as well. *Drago* v. *A/S Inger*, 305 F. 2d 139 (2 Cir.), cert. denied, *Daniels & Kennedy, Inc.* v. *A/S Inger*, 371 U.S. 925, 83 S. Ct. 292, 9 L.Ed. 2d 232 (1962); *Williams* v. *Pennsylvania R. Co.*, 313 F.2d 203 (2 Cir. 1963)."

See also *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 U.S. 563, where the judgment of the Court of Appeals was reversed and the case sent back for a new trial on the issue of indemnity, where, as in this case, the shipowner was held negligent but its vessel was found to be seaworthy.

The case of *Schwartz* v. *Compagnie General Transatlantique*, 405 F.2d 270 (2 Cir. 1968) does not stand for nor support the proposition urged by the third-party defendant. In that case this Court declined to apply the warranty of workmanlike service doctrine because the injured Immigration Inspector was not on board for the

purpose of performing a business service upon which the indemnity-owner had ultimately relied but was performing a statutory function.

POINT V

Inaction on the part of a shipowner is no conduct sufficient to preclude indemnity.

In Point III of its brief the third-party defendant International Terminal Operating Co., Inc. urges that the Court's charge that inaction on the part of the shipowner could preclude indemnity was eminently correct and that the cases of *Waterman SS Corp.* v. *David*, 353 F.2d 660 (5 Cir. 1965) and *Humble Oil & Refining Co.* v. *Philadelphia Ship Maintenance Co.*, 444 F.2d 727 (3 Cir. 1971) support this proposition.

In *Weyerhaeuser SS Co.* v. *Nacirema Co.*, 355 U.S. 563, 569 the United States Supreme Court however pointed out that in the area of contractual indemnity an application of the theories of active or passive as well as primary or secondary negligence was inappropriate. Furthermore, as the Court noted in *Simpson* v. *Royal Rotterdam Lloyd*, *supra* (225 F. Supp. at pages 953 and 954) under the law as established in this circuit some affirmative conduct on the part of the shipowner is necessary in order to preclude indemnity. The case of *International Terminal Operating Co., Inc.* v. *N.V. Nederl Amerik. Stoomv. Maats.*, 393 U.S. 74 (1968) supports this proposition. In that case the stevedore's hatch boss had informed one of the ship's officers that his men would walk off the job unless the officer turned on the ship's ventilating system. The officer told the men to continue working and promised to activate the ventilating system which was within the shipowner's exclusive control. The Supreme Court reversed the Court of Appeals which had held that the hatch boss should have ceased work when he first learned that the ship's ven-

tilating system was not operating, despite the officer's promise to turn on the system and held that the question whether the hatch boss had acted reasonably in continuing to work in reliance on the officer's promise, was under the circumstances properly an issue of fact.

In *Waterman Steamship Corporation* v. *David,* 353 F.2d 660 (5 Cir. 1965), while the jury had answered the interrogatory whether the stevedore was negligent in the affirmative, it answered the interrogatory whether the stevedore breached its warranty to perform its job in a reasonably safe, proper and workmanlike manner in the negative. The Court merely held that the finding of negligence but no breach of warranty of workmanlike service was not inconsistent under the facts of that case. The case of *Humble Oil & Refining Co.* v. *Philadelphia Ship Main. Co.,* 444 F.2d 727 (3 Cir. 1971), involved a claim for indemnity against the stevedore which was asserted in a separate action from that brought by a longshoreman against the shipowner and the issue before the Court was whether it was proper to grant summary judgment predicated on the jury's answers to special interrogatories in the longshoreman's action against the shipowner to which the stevedore was not a party.

Since the burden of proving conduct on the part of the shipowner sufficient to preclude indemnity rests upon the stevedore and the stevedore offered no such evidence and can point to no evidence in the record of any affirmative conduct on the part of the ship or those for whom it was responsible, the jury's finding precluding indemnity is incorrect, not only as a matter of law, but as a matter of fact. In fact, there is no evidence in this case even of any inaction on the part of the shipowner within the definition of either *Waterman Steamship Corp.* v. *David, supra* or *Humble Oil & Refining Co.* v. *Philadelphia Ship Main Co., supra* sufficient to preclude indemnity.

POINT VI

Under the Authorities cited by the plaintiff the Jury's finding of negligence cannot be sustained.

The plaintiff's reference to the holding in *Cooper* v. *D/S A/S Progress*, 188 F. Supp. 578 (D.C. Pa., 1960), that "once this testimony became evidence in the case, there was implied consent to try the issues raised by such evidence" confirms the fact that overloading was never an issue in the case and was never intended to be one. In the *Cooper* case the testimony referred to was not objected to. The testimony of Montella and Ratliff however, was given over objection. In fact, plaintiff's counsel joined in the objections that there was no testimony in the case that the pipes were loaded above the uprights (114a, 257a). The Court was incorrect in stating that the question to Montella had a bearing on some questions asked by defendant's counsel (257a). The question which defendant's counsel asked was whether the pipe bed as constructed by Montella would hold any pipe that was loaded *within* that area (Emphasis supplied) (256a, 257a).

Furthermore, the testimony referred to in the Cooper case fell within a claim set forth in the plaintiff's pretrial memorandum. In this case in addition to stating in his objections that there was no evidence in the case that the pipe was loaded above the top of the uprights, plaintiff's counsel in opposing a motion to dismiss at the end of his case stated specifically "the testimony is to the effect that the uprights broke in normal use" (191a). This was restated at the end of the entire case (393a). In any event, as has been pointed out in Point I of this brief, isolated portions of a witness's testimony do not support any inferences, particularly when as in this case the witness testified unequivocally and without contradiction at variance with such an inference.

The case of *Van Horn* v. *Gulf Atlantic Towing Corp.*, 388 F.2d 636 (4 Cir. 1968) does not stand for the proposition that the jury could have found shipowner negligent for a faulty inspection or a failure to inspect in the absence of evidence of a defective condition which inspection would have disclosed or which would have been discoverable by an inspection, as plaintiff appears to urge. The *Van Horn* case in the first instance involved a motion for summary judgment. Secondly, the plaintiff in that case admitted that shortly after he boarded the vessel and before the accident he observed slippery residue on the barge. The Court rejected the shipowner's contention that on its delivery of the barge to the shipyard, its duty to furnish a safe place of work had ceased, because on the evidence it appeared that the owner of the barge did have control at the time of the creation of the dangerous condition. In any event in this case it follows from the finding of no unseaworthiness that the ship performed its duties not only with due diligence but also in accord with the absolute standards required for seaworthiness. *Nosal* v. *Calmar Steamship Corporation*, 339 F. Supp. 1235, 1237.

The plaintiff's reference to the case of *Atlantic & Gulf Stevedores, Inc.* v. *Ellerman Lines*, 369 U.S. 355 (1962) to support the proposition that the jury could have concluded that the defendant shipowner failed to provide the plaintiff with a reasonably safe place to work, is also in error. In that case the jury had found both that the shipowner was negligent and that its vessel was unseaworthy. In this case the jury not only found that the vessel was seaworthy, but specifically under the Court's definition of seaworthiness that the shipowner had furnished the plaintiff with a reasonably safe place of work. Having so found and further within the Court's definition of seaworthiness that the pipe bed was reasonably fit for its intended purpose, which as has been pointed out in Point II of the main brief, embraces not only stowage, but

also the loading operations, there can be no finding of negligence under the facts of this case or the applicable law. It is obvious that the only reason why the jury found the shipowner negligent was because of the Court's incorrect charge as to the responsibility of the shipowner for the negligence of the longshoremen and its erroneous charge that inaction on the part of the shipowner was sufficient to preclude indemnity.

POINT VII

The brief of New Jersey Export does not accord with the record in this case.

While New Jersey Export accuses the defendant shipowner of presenting testimony out of context, a comparison of its brief with the record in this case shows that it is New Jersey Export which sets forth selective excerpts from the testimony out of context. Though this accusation is directed at the defendant shipowner, nowhere in its brief does New Jersey Export show by a reference to the record that anything which is stated in the shipowner's brief is either selective or presented out of context.

The appellant does not propose to point out every excerpt which New Jersey Export has presented out of context. At page 10 of its brief, New Jersey Export seeks to dismiss the testimony of its foreman Montella that when he admitted on cross-examination that the Port Captain did not have to tell him what to build the pipe bed with, that the lumber which was ordered was what Montella knew was needed, and that what the Port Captain was really concerned about, was that money was not wasted amongst others, by characterizing it as "the inartful testimony of a carpenter foreman's referring to billing practices and accounting procedures". A reading of the record does not support this assertion (235a-236a, 239a-240a).

At page 10, it is also stated categorically that the carpentry foreman Montella was not shown the cargo plan or the Port Captain's documents. Montella testified that he used the stowage plan sometimes in connection with his work as marine carpenter, but in this instance was not shown a copy. He explained that there are times when at the time he begins work aboard a vessel, the Port Captain may not know what he is going to get because all the cargo is not booked (233a-234a). With respect to the Port Captain's documents, Montella merely testified that he did not *look* at the Port Captain's documents (235a).

At page 8 of its brief New Jersey Export states that "The jury was also given the question of whether the ship's conduct prevented New Jersey Export from doing its work in a workmanlike manner". No such issue went to the jury (463a-466a).

New Jersey Export's brief also talks about overloading, and urges that the jury could have inferred that at sometime after loading began the ship ordered the pipe bed to be overloaded. It, however, does not support these assertions by any references to the record. Its brief obviously does not comply with the requirements of Rule 28(b) of the Federal Rules of Appellate Procedure.

Respectfully submitted,

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Court Press Form No. 2-Affidavit.
H.15

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOAQUIM CONCEICAO,

Plaintiff-Appellee,

against

NEW JERSEY EXPORT MARINE CARPENTERS, INC.,

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Defendant and Third-Party
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INTERNATIONAL TERMINAL OPERATING CO., INC.,
Third-Party Defendant-Appellee.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes and says that he is over the age of 18 years. That on the 11th day of July, 1974, he served two copies of the Appellant's Reply Brief on the attorneys for the See attached list See attached list by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said attorneys at No. See attached list ( ) N. Y., that being the address designated by them for that purpose upon the preceding papers in this action.

David F. Wilson

Sworn to before me this

11th day of July, 1974.

Courtney J. Brown

COURTNEY J. BROWN
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No. 31-5472[illegible]
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